
ENVIRONMENTAL Fact Sheet



29 Hazen Drive, Concord, New Hampshire 03301 • (603) 271-3503 • www.des.nh.gov

CO-7

2006

Appealing a Decision of the N.H. Dept. of Environmental Services

The Councils attached to the Department of Environmental Services (DES) are legal entities created under RSA 21-O that are composed of representatives of diverse interests, including business and industry, recreation, environmental groups, municipalities, and state agencies. There currently are four Councils: the Water Council, which deals with the programs implemented through the Water Division other than Wetlands; the Wetlands Council, which deals with the Wetlands Program; the Waste Management Council, which deals with the programs implemented through the Waste Management Division; and the Air Resources Council, which deals with the programs implemented through the Air Resources Division. Among other duties, each Council hears appeals of permitting decisions made by the programs with which it deals and appeals of administrative orders issued for violations of those programs' requirements. Council members are compensated only for mileage. Their job in an appeal is to decide whether what has been done by the program is in accordance with applicable law, although very few members have any formal legal training.

If you have been adversely affected by a DES permitting decision or issuance of an administrative order and wish to appeal the decision or order, there are specific procedures prescribed by law which you must follow. You may choose to represent yourself or to have an attorney or other person represent you. The complete rules of the Council to which you are appealing should be obtained and reviewed. Important information is highlighted below.

- For most decisions, you must file your appeal **within 30 calendar days** of the date that appears on the front of the document that contains the decision you are appealing. If the 30th day is a weekend or holiday, the appeal can be filed on the first business day after for all Councils EXCEPT the Wetlands Council. (The time period for filing an appeal to the Wetlands Council is established by statute, and is not extended to the first business day even if the period ends on a weekend or holiday.) If an appeal is not filed in time, it may not be heard.
- In order to file an appeal, you must have a direct interest in the order or decision that you wish to have changed. That is, you cannot appeal a decision simply because you don't like it. The decision must impact you **directly** and in some way **other** than it impacts the general public. This is called having **standing** to bring an appeal. If you do not have standing to bring an appeal, you may be allowed to **intervene** in an appeal brought by a person who does have standing, if you can show that you have a substantial interest in the appeal. A motion to intervene must be filed with the Council that is hearing the appeal and will not be granted automatically.
- An appeal petition (or notice) must contain your full name and current address. It must also include a copy of the document that contains the decision you are appealing and all

the pertinent facts, what you would like the Council to do (for example, overturn an administrative order), and the reasons for or arguments supporting your position. Note that the Council's authority is limited to upholding or overturning, in whole or in part, the decision being appealed. Establishing conditions and terms of permits is solely within the authority of the programs within DES.

- Appeal hearings usually are held at the DES offices at 29 Hazen Drive in Concord.
- You must submit the **original and a number of copies** (as specified in the Council's procedural rules) of any document to be filed with the Council. Also, the presiding officer will require a specified number of copies of any documents, photographs or exhibits to be offered as evidence at the hearing, to ensure that all Council members and parties to the appeal have a copy.
- Copies must also be served on certain members of DES and other persons, as specified by the applicable Council rules.
- You are **prohibited by law** from directly contacting any member of the Council deciding your appeal concerning that appeal, unless all other parties to the appeal have been **notified in advance** and been given an **opportunity to participate** in the discussion. Council members are obligated to report any contact they have with parties outside of the hearing that may come under this prohibition.

This fact sheet is intended as a basic source of information concerning appeals from DES permitting decisions and administrative orders. It is not intended to replace the administrative rules of each Council, but merely to provide a summary of some of the relevant requirements.

For more information, contact the DES Legal Unit, PO Box 95, Concord, NH 03302-0095; (603) 271-6072; appeals@des.state.nh.us.

For copies of Council rules, contact DES Public Information and Permitting; PO Box 95; Concord, NH 03302-0095; (603) 271-2975; PIP@des.state.nh.us; or see http://www.des.nh.gov/rules/desadmin_list.htm#boards.